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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 28, 1993

By Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

OUR FILE NO.
0992-102-60

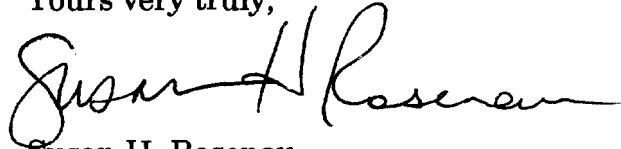
RE: MM Docket No. 93-42, Calistoga, California

Dear Mr. Caton:

On behalf of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a New FM Station on Channel 265A in Calistoga, California, please find the original and six copies of its Reply of Moonbeam, Inc. In Support of Motion to Enlarge in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,


Susan H. Rosenau

Enclosures (6)

cc: Moonbeam, Inc.
Robert Zauner, Esquire
A. Wray Fitch, Esquire
Administrative Law Judge Edward Luton

Before The

SEP 28 1993

Federal Communications Commission

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications Of)	Docket No. MM 93-42
)	
MOONBEAM, INC.)	File No. BPH-911115MG
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

To: The Honorable Edward Luton
Administrative Law Judge

Reply of Moonbeam, Inc. in Support of Motion to Enlarge

Pursuant to Section 1.229 of the Commission's Rules,
Moonbeam, Inc. ("Moonbeam"), by its attorneys, respectfully submits this
Reply to the Opposition of Gary Willson ("Willson") to Moonbeam's
August 18, 1993 Third Motion to Enlarge Issues Against Gary E. Willson
("Motion"), stating in support thereof as follows:

1. In its Motion, Moonbeam requested the addition of a staffing
issue based on Willson's sworn testimony at deposition and at hearing
that:

- If awarded the Calistoga construction permit, he would have four full-time employees, *including himself*, and "maybe a couple of part-time" employees, some of whom would do sales;¹
- Willson would himself be general manager of the station, and Willson's other full-time employees would include a "production manager, a program director combination salesman, and maybe sales manger, salesman;"²

¹Transcript of Deposition of Gary E. Willson, June 4, 1993 ("Willson Dep."), at 100-101, 106-107.

²Willson Dep. at 100, 101.

- Willson would not have an on-air shift;³
- His proposed station would have four full-time employees, including himself, and three part-time employees;⁴
- Willson's duties as General Manager would include supervision of programming, administration, personnel, budgeting, engineering, and especially sales;⁵
- The full-time employees would include a "Program Director/Combination Production Manager, Sales Manager/Announcer and . . . Office Manager/Bookkeeper;"⁶
- His proposed station would not be automated;⁷
- His proposed station would probably operate twenty-four hours per day;⁸ and
- He would not do announcing at the proposed station.⁹

2. Moonbeam demonstrated in the motion that the foregoing plan was unworkable because, after subtracting 168 hours of on-air staff time, his staff would have only 42 hours during which to perform all off-air duties, such as sales, sales management, programming, programming direction, production, production management, clerical duties, office management and bookkeeping. Accordingly, Moonbeam requested a staffing issue against Willson.

3. In his opposition, Willson argues that Moonbeam's motion was based on "unfounded assumptions." Opposition to Third Motion to Enlarge Issues Against Gary E. Willson, filed September 16, 1993

³Willson Dep. at 102.

⁴Transcript of Proceedings, *In re Applications of Moonbeam, Inc. and Gary E. Willson*, MM Docket No. 93-42, July 21-22, 1993 ("Tr."), Volume 3, page 254.

⁵Tr. at 257-258, 260.

⁶Tr. at 257.

⁷Tr. at 260.

⁸Tr. at 260.

⁹Tr. at 261-262.

("Opposition"), at 3. In support of his argument, Willson at length revised his testimony.

4. After testifying that he did not plan to automate his proposed station, Willson now states that he might have "some" automation (Opposition at 3). Willson now also proposes to utilize a music service, and, according to the Opposition, may air long segments of multi-hour all-music programming and/or repeat broadcasts (*Id.* at 3-4).

5. Further, although Willson testified that he would operate 24 hours per day, seven days per week, he now asserts that he will operate only 18 hours per day for the first few months of operation (*Id.* at 2). Willson claims he will hire four part-time employees rather than three (*Id.*). Finally, Willson apparently intends to work his full time employees more than 40 hours per week, although how much more he does not say (*Id.* at 3).

6. Thus, it appears to be Willson's testimony, and not Moonbeam's assumptions, which were unfounded. By completely contradicting his prior testimony, Willson concedes that the staffing proposal he described in his testimony at deposition and at hearing *was*, in fact, inadequate. At best, Willson concedes that he has no actual staffing proposal, which supports the addition of the requested issue, and further places in doubt Willson's financial certification.

7. Willson has failed to demonstrate that the numerous cases he cites have any substantial factual connection to Willson's proposal. For example, in the recent case of *Annette B. Godwin*, 8 FCC Rcd 4098 (Rev. Bd. 1993), the Review Board's opinion did not indicate whether Ms.

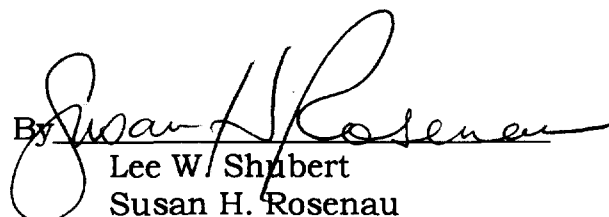
Godwin intended to run an automated station.¹⁰ Further, as Willson admits, the recent *Linda U. Kulisky* case *did* involve an automated station. *Linda U. Kulisky*, 8 FCC Rcd. ____ (Rev. Bd., released August 31, 1993). Fundamentally, what the staffing cases hold is that each case turns on its own facts. The Commission grants applicants great flexibility in formulating their staffing proposals, but where, as here, the small number of staff and the mode of operation are inherently inconsistent, a staffing issue is warranted. *Pepper Schultz*, 4 FCC Rcd 6393 (Rev. Bd. 1989).

CONCLUSION

For the foregoing reasons, Moonbeam, Inc. respectfully requests that the issues in the captioned proceeding be enlarged as requested in its Motion, and that Gary Willson be ordered produce the supplementary discovery set forth in Exhibit 4 thereto.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau
Its Attorneys

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September 28, 1993

¹⁰Counsel for Moonbeam reviewed the FCC's files prior to the filing of the instant motion in an effort to ascertain this very fact. The relevant information was not available.

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing Reply of Moonbeam, Inc. in Support of Third Motion to Enlarge Issues Against Gary E. Willson was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

A. Wray Fitch, III, Esquire
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton
2000 L Street N.W.
Washington, D.C. 20036

Robert Zauner, Esquire*
Federal Communications Commission
Mass Media Bureau, Hearing Branch
Suite 7212
2025 M Street N.W.
Washington, D.C. 20554

A handwritten signature in cursive script, appearing to read "Lucy D. Santre", written over a horizontal line.

September 28, 1993